

## CHAPTER 6

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# BROKER REQUIREMENTS

### Section 6-1

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#### REQUIREMENTS

**6-1.1 Authorization.** Administrative Rule 1 (257.181) promulgated under the *Michigan Vehicle Code* outlines licensing requirements for brokers. A broker is anyone who, in exchange for compensation, does at least one of the following regarding the sale, lease, purchase, or exchange of a vehicle to which he/she does not have title, ownership, or other legal interest:

- a) Brings together the buyer and seller;
- b) Negotiates the terms of a transaction;
- c) Shows or displays a vehicle.

**6-1.2 Exclusion.** A person licensed as a Class A, B, C, E, F, H, or R dealer may not be licensed as, or function as, a broker. The only other license classification a Class D Broker may hold is a Class G Vehicle Salvage Pool license.

### Section 6-2

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#### BROKER LICENSING

**6-2.1 Procedure.** As with all other vehicle dealers, a broker must file an application for a dealer license with the Michigan Department of State. The following requirements must be satisfied as part of that application:

- a) Established place of business where books and records will be maintained and a large share of the business transacted;
- b) Proof of a \$10,000 surety bond filed;
- c) Secretary of State branch office designation;
- d) Regular business hours maintained;
- e) Fingerprint cards filed;
- f) Payment of the annual license fee.

**6-2.2 License Expiration.** All dealer licenses, including broker licenses, expire at midnight of December 31 each year.

**6-2.3 Additional Locations in Same County.** A supplemental license, at no fee, is required for

any additional locations in the same county.

**6-2.4 Additional Locations in Another County.** A new, separate license is required for any additional business locations in another county.

### **Section 6-3**

#### **DEALER PLATES AND MOVING PERMITS**

**6-3.1 Prohibition.** Brokers do not qualify to purchase dealer plates. Dealer plates may only be purchased by Class A and B dealers for use on their vehicles.

**6-3.2 Temporary Moving Permits.** The owners of brokered vehicles may, however, obtain temporary moving permits in order to driving vehicles. These temporary moving permits are available from Secretary of State branch offices and must be purchased by the owner of the vehicle – not the broker. The moving permits are valid for 14 days. The purchaser must provide proof of insurance at time of purchase.

**6-3.3 Auctions.** Michigan law authorizes auctions to purchase special registration plates to pick up and deliver customer vehicles. Contact a Secretary of State branch office for the special auction plate application form.

### **Section 6-4**

#### **TITLE REASSIGNMENTS**

**6-4.1 Name on Title.** A broker may not be named as an owner in a title assignment or reassignment, unless the broker applies for title in the broker's own name and pays sales or use tax. Titles may not be reassigned by brokers. Resale titles may not be issued to brokers.

**6-4.2 Prohibition.** Under law, a broker deals in vehicles which the broker does not own or for which the broker does not have title. A dealer cannot act as a broker to deal in vehicles to which the dealer holds title. Consequently, a broker's name cannot appear as an owner or in a vehicle title reassignment on a vehicle title for a vehicle which is being held for sale.

### **Section 6-5**

#### **TITLE AND REGISTRATION APPLICATION – RESPONSIBILITY**

**6-5.1 Selling Dealer Requirement.** Section 217 of the *Michigan Vehicle Code* (MCL 257.217) requires a selling dealer to apply for the retail purchaser's title within 15 days of vehicle delivery. The dealer is also required to register the vehicle for the purchaser. In many brokered retail transactions, the seller will be a licensed Class A or B dealer. In these instances, the selling Class A or B dealer is responsible for applying for title and registration.

**6-5.2 Application Service.** Auctions and brokers frequently complete the title and registration application as a service to the selling dealer. In these instances, the selling dealer's RD-108

form is used.

**6-5.3 Dealer to Dealer (Wholesale) Transactions.** In brokered wholesale transactions, the purchaser will be a Class A, B, or C dealer. In these instances, it is not necessary to apply for a new title, since the seller simply assigns the title to the purchasing dealer.

**6-5.4 Other Brokered Transactions.** When neither the buyer nor the seller is a dealer, the broker is responsible for applying for the purchaser's title and registration and for collecting sales tax. The broker uses their RD-108 to apply for the purchaser's title and registration and to submit sales tax.

## **Section 6-6**

### **TITLE AND REGISTRATION APPLICATION PROCESS**

Each broker may choose up to three designated Secretary of State branch offices for processing retail vehicle sales transactions. The process is as follows:

- a) The RD-108 is completed as described in Chapter 7, showing the broker's name, address, dealer license number, sales tax number, and telephone number in the upper left portion;
- b) The broker types in the name of the seller and the title number shown on the title in the Remarks section of the RD-108;
- c) The broker submits the completed RD-108, properly-assigned title, title and registration fees, sales tax, proof of insurance, and discharge of lien (if applicable) to a designated Secretary of State branch office.

## **Section 6-7**

### **NEW VEHICLES**

When brokering a new vehicle, the broker does not complete their own RD-108 or apply for the purchaser's title and registration. The broker must deal only through a licensed Michigan Class A dealer. It is the selling Class A dealer's responsibility to apply for the purchaser's title and registration, using the Class A dealer's RD-108.

## **Section 6-8**

### **TEMPORARY REGISTRATIONS**

**6-8.1 Issued by Broker.** When a broker is responsible for applying for title and registration, the broker may issue a 15-day temporary registration to the purchaser. The broker is responsible for ensuring that insurance coverage is in effect and for showing the temporary registration number on the RD-108.

**6-8.2 Issued by Another Licensed Dealer.** When the RD-108 application is the responsibility of another licensed dealer (the seller), 15-day temporary registrations are issued by the selling

dealer – not the broker.

## **Section 6-9**

### **RECORD KEEPING REQUIREMENTS**

**6-9.1 Police Book.** As with other licensed dealers, brokers must keep records in a Police Book. The Police Book entry is made at the time of consignment. A washout system cannot be used by a broker. See Chapter 2, Section 2-2 for more information.

**6-9.2 Required Information.** The Truth in Brokering Act requires certain information when a vehicle owned by a licensed dealer is being purchased or leased through a licensed broker by someone who is not a licensed dealer. In addition to information required in Chapter 2, Section 2-2, the broker's Police Book must include the following information:

- a) The business name and Michigan dealer license number of the selling dealer; and,
- b) The amount of any and all fees, commissions, compensation, and other valuable consideration received by the broker either from the lessor, purchaser/lessee or from the licensed dealer.

The selling Class A or B dealer's Police Book must include:

- a) The business name and Michigan broker license number of the broker; and,
- b) The amount of any and all fees, commissions, compensation, and/or other valuable consideration paid by the dealer to the broker.

The selling Class A or B dealer must enter the broker's business name and license number in the Remarks section of the RD-108.

**6-9.3 Other Records.** In addition to the Police Book, a broker is required to maintain the following records:

- a) RD-108s when the broker applies for title and registration;
- b) 15-day temporary registrations, when issued;
- c) Purchase agreements; and
- d) Broker fee agreement when the broker charges a fee or accepts a deposit and is required to prepare such a document before the fee or deposit is paid. See Section 6-10 for additional information regarding broker fee agreements.

**6-9.4 Length of Retention.** Brokers are required to maintain for five years copies of all purchase agreements, bills of sale and other documents related to negotiated transactions. Copies of RD-108s must be kept for at least five years. It is recommended that copies of both the front and back of the assigned title be retained.

## **Section 6-10**

### **BROKER FEE AGREEMENT**

When a broker charges a fee or accepts a deposit, the broker prepares a written document setting forth the following information:

- a) The amount of the fee;
- b) When, in what manner, and under what circumstances the fee is payable;
- c) The amount of any deposit required in advance, and under what circumstances the deposit or any portion shall be refunded;
- d) The time for which the broker's services are contracted;
- e) Any other terms agreed upon by the broker and the person paying the fee or deposit;
- f) The document is signed by both the broker and the person paying the fee or deposit. A copy is given to the person paying the fee or deposit at the time of signing. A copy is also retained by the broker.

## **Section 6-11**

### **PURCHASE AGREEMENT**

**6-11.1 Requirement.** When a broker negotiates the sale or lease of a vehicle, the broker must prepare a purchase agreement. (Negotiating a sale or lease includes situations where communication regarding the sale or lease is conducted through the broker rather than directly between the buyer and seller or the lessor and lessee.) The purchase agreement is in addition to any other documents required by law to be executed between the buyer and seller. The broker, the buyer and the seller, or the lessor and lessee all sign the purchase agreement. The broker must keep copies of purchase agreements for five years.

**6-11.2 Date on Purchase Agreement.** The purchase agreement is dated no later than the date the vehicle is delivered to the buyer. Copies of the agreement are provided to the buyer and seller at the time of signing.

**6-11.3 Forms.** The purchase agreement does not replace other required forms and documents (RD-108, broker's fee agreement, Police Book, etc.). Auctions may combine the broker's fee agreement and purchase agreement. Purchase agreement forms may be submitted in advance to the Dealer Program Section for approval. Purchase agreement forms should be pre-printed and must contain:

- a) A description of the vehicle including the following:
  - 1) Make;
  - 2) Model year;
  - 3) Vehicle Identification Number;

- 4) Body style;
- 5) Dealer- and factory-installed accessories;
- b) The name, address, and Michigan vehicle dealer license number of the dealer who is selling, purchasing, or leasing the vehicle;
- c) Name and address of the seller or lessor;
- d) Name, address, and Michigan vehicle dealer license number of the broker;
- e) Name and address of the buyer or lessee;
- f) Date of delivery;
- g) Odometer reading;
- h) Total price, or – in the case of a lease – the gross capitalized cost; and,
- i) Down payment, or – in the case of a lease – the capitalized cost reduction, if any;
- j) Statement signed by the broker certifying that the terms of all vehicle warranties have been disclosed to the buyer or lessee;
- k) A statement signed by the broker, disclosing the names of all parties to the transaction whom the broker represents; and,
- l) Signatures of buyer or lessee; seller or lessor; and licensed broker, or the authorized representatives of all parties to the transaction.

Brokers may disclose additional information on the purchase agreement.

## **Section 6-12**

### **ADVERTISING**

Brokers who advertise their services must disclose their status as brokers.

## **Section 6-13**

### **ELECTRONIC RECORD REQUIREMENT**

The Department of State requires licensed Michigan brokers to submit their records in an electronic format. This applies only to records of vehicles sold at retail by a licensed dealer where a broker is involved in the transaction.

For additional information on how to submit the records, contact the Dealer Program Section at 517/373-9082.